

March 8, 2016

**To: Members of the Banking Committee**

**Fr: Connecticut Bankers Association**

**Contact: Tom Mongellow, Fritz Conway**

**Re: [S.B. No. 403](#) AN ACT CONCERNING FORECLOSURE BY COMMERCIAL POWER OF SALE**

**Position: Support**

**THE PROBLEM THAT THIS BILL ADDRESSES**

- Frequently, when a commercial borrower stops paying the mortgage, the borrower stops caring for and maintaining the property. The property deteriorates and has a negative impact on the neighborhood.
- The community consistently expects the bank lender to recover, repair and sell the property to a new buyer as quickly as possible. A bank cannot accomplish this prior to a foreclosure being completed.
- Currently under Connecticut foreclosure law, it is difficult, time-consuming and costly for a bank to recover and sell a commercial property when the commercial borrower defaults on the mortgage and uses various legal maneuvers to delay the conclusion of the foreclosure.

The average commercial foreclosure can take over a year and Connecticut is regarded as one of the most difficult states in the nation for recovering a foreclosed commercial property.

The Judicial system is clogged with commercial mortgage cases, where there is no hope of the borrower being able to bring the mortgage current. Frivolous motions to delay the process are common.

When national lenders look at commercial marketplaces to lend in, Connecticut is last on their list due to its slow and expensive foreclosure process, which restricts the amount of capital available for businesses to stay and expand in the state.

**THE SOLUTION SET FORTH IN THIS BILL**

- The foreclosure procedure set forth in this bill only applies to commercial mortgages. It does not apply to residential mortgages.
- At least Thirty-three other states have laws that allow lenders to exercise some type of foreclosure by power of sale on commercial mortgages.
- This bill allows a lender to foreclose upon a defaulted mortgage and sell the property, without first having to file an action in Court. After the default (usually after two or

three months of non-payment and no resolutions available), the lender must provide at least five weeks' notice of the sale to the commercial borrower and to other interested parties (lienholders). The bill does not take away the borrower's right to go to Court – the borrower and/or other interested parties can file a claim in Court to stop the sale if they dispute the lender's right to go forward with the sale.

**THIS BILL CONTAINS EXTENSIVE SAFEGUARDS FOR COMMERCIAL BORROWERS ...**

- The commercial borrower has the right to go into court to seek a protective order to stop the foreclosure sale;  
The commercial borrower has the right to reinstate the mortgage up to 15 days prior to the date of the foreclosure sale (pay the past due amount and charges due);
- The commercial borrower has the right to cure (pay off the entire mortgage) at any time up to the day and time of the foreclosure sale;
- The commercial borrower has the right to receive excess proceeds of the foreclosure sale after the debt owed, subordinate liens, costs and expenses of the sale are satisfied.
- The commercial borrower retains the right to pursue in Court any legal rights or claims that the commercial borrower may have against the Lender.

We strongly urge the committee to look favorably upon this important commercial foreclosure option. We would welcome the opportunity to work with the Committee and all stakeholders to fine tune this important proposal.